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CHANDIGARH ADMINISTRATION

DEPARTMENT OF FORESTS & WILDLIFE

Notification

The 1st June, 2020

No. CFD/2020/ 71.—In supersession of this office order No. CFD/11, dated 15.04.2013, the Adviser to the Administrator, Union Territory, Chandigarh is pleased to re-constitute the Departmental Promotion/Selection Committee for Group-B posts in the Forests & Wildlife Department, Chandigarh Administration consisting of the following members :—

- | | | |
|--|----|----------|
| 1. Principal Secretary/Secretary (Forests),
Chandigarh Administration | .. | Chairman |
| 2. Chief Conservator of Forests (HOD),
Chandigarh Administration | .. | Member |
| 3. Special Secretary Personnel,
Chandigarh Administration | .. | Member |
| 4. Director Social Welfare,
Chandigarh Administration | .. | Member |
| 5. Deputy Conservator of Forests (HQ),
Chandigarh Administration | .. | Member |

Signature Not Verified
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JATINDER KUMAR
Date: 2020.06.02
15:41:22 IST
Reason: published
Location:

Chandigarh :

The 27th May, 2020.

ARUN KUMAR GUPTA, IAS,

Principal Secretary Forests,
Chandigarh Administration.

(605)

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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 29th May, 2020

No. 13/1/9748-HII(2)-2020/6943.—In exercise of the powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 11/2016, dated 25.02.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

POONAM SHARMA W/O SHRI JAI PRAKASH R/O HOUSE NO. 641, SECTOR 22-A,
CHANDIGARH (Workman).

AND

1. GOVERNMENT MEDICAL COLLEGE & HOSPITAL, SECTOR 32, CHANDIGARH THROUGH ITS MEDICAL SUPERINTENDENT/DIRECTOR PRINCIPAL.
2. KESHAV SECURITY SERVICES, CAMP OFFICE GMCH, SECTOR 32, CHANDIGARH.
3. KESHAV SECURITY SERVICES, NO. 18, LOCAL SHOPPING CENTRE, 2ND FLOOR, MADANGIR, NEW DELHI-110002 (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that in the year 1997 the management No. 1 advertised permanent vacancies for the post of File Restorer for its office. The workman being eligible applied for the same. The workman was subjected to lengthy process of selection and finally she was selected having qualified all the stage of the selection process successfully. The workman was according given a joining letter. In January 1998 the workman joined the service of management No. 1. The joining letter was submitted, as it was asked by management No. 1, with the Medical Record Department of management No. 1. After having joined the services, the workman was allotted the identity card by management No. 1 on 15.07.1999. Since the time of joining in January 1998 the workman was working in the same department i.e. Medical Record Department of management No. 1 on the same post of the File Restorer. She performed her duties to the best of her ability and to the entire satisfaction of his superiors and never gave any chance of complaint whatsoever. By operation of law the workman became permanent employee of management No. 1 after successful completion of one year of service i.e. in the year 1999. Despite repeated request by the workman time and again for payment of the salary by management No. 1 to at par with permanent employee, the matter was not paid any heed and was postponed on one pretext or the other. Since the request of the workman was not being considered for last many years so she again on 7th January 2015 requested authorities of management No. 1 to promote her to the next higher post as well as pay the salary to the workman at par with permanent employees. The Director Principal namely Shri Atul Sachdeva assured the workman that he will look into the matter immediately and the needful be done in favour of the workman within a week. Since nothing was done, the workman again approached the Director Principal Dr. Atul Sachdeva on 23.01.2015 and apprised about her request and promise. Dr. Atul Sachdeva—Director Principal advised the workman to meet ADA Smt. Amandeep Kaur of the department. Smt. Amandeep Kaur was on leave so she could not be apprised about the direction of the Director Principal. On 14.02.2015, the workman met Smt. Amandeep Kaur, ADA and apprised about the directions of Director Principal. The said Smt. Amandeep Kaur told her that she will discuss the matter with higher authorities including Director Principal and will let the workman know about the result within 10 days. The HOD informed

the workman that in all probabilities the salary of the workman will not be increased and if the workman wants, she can resign on personal grounds, to which the workman refused and continued to perform her duties. On 20.02.2015 when the workman went to perform her duties, she was not allowed to mark her attendance and the Head of Department Dr. Virender Saini and Superintendent Shri Shyam Sunder asked the workman to leave the office as they have been instructed by said Smt. Amandeep Kaur not to allow the workman to mark her attendance and informed that her services are no more required. The workman was not allowed to mark her attendance illegally and arbitrarily so she called police control room at No. 100 and the PCR Van came. The HOD and Superintendent of management No. 1 informed the workman that the workman is not an employee of management No.1 but is an employee of M/s Keshav Securities Services i.e. management No. 2 & 3. The police officials suggested the workman to approach this Tribunal for remedies. The workman immediately sent complaints dated 20.02.2015 to the SHO, P.S. Sector 34, Chandigarh and to the S.S.P., Chandigarh. Though on 20.02.2015 the workman was not allowed to mark her attendance however she was going to the office to perform her duties but no work is being given to the workman. Thereafter, the workman filed a written complaint before the Labour Commissioner and the Labour Commissioner appointed an Inspector to enquire & collect the correct and authentic report on given complaint but the workman was not satisfied with this enquiry/report. The workman was employed against the permanent vacancy. The Provident Fund of workman was being deducted right from the beginning. The workman was issued with ESI Card bearing No. IP No. 1707727902 in the year 1999 itself. The P.F. account Number of the workman is PHCHD/02910/000180. The salary to the workman is being paid by management No. 1 so she is the permanent employee of management No. 1 and management No. 1 cannot take shelter that the employment of the workman is through management No. 2 & 3. The officials of management No. 1 flatly refused to give any promotion and pay salary to the workman at par with permanent employee of Government Sector and the workman was further threatened that her services will be terminated. Ultimately, it is prayed that the workman be reinstated into service and to pass order declaring her services as permanent, to promote her and to pay salary and arrears at par with the salary of permanent employee of Government sector from the date of her joining.

3. Management No.1 contested the case of the workman and filed written statement raising preliminary objection that the answering management is not a principal employer as the answering management never deployed the workman nor any appointment was issued to the workman. On merits, it is pleaded that the GMCH has never advertised permanent vacancies for the post of File Restorer rather the services for the said posts are being outsourced through service provider/contractors from time to time. The service provider is the actual employer of the workman and cause of action, if any, arises then it can be enforced against the service provider only. No wages is paid to the workman from answering management and attendance register is also not maintained or kept in the office of the answering management. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed *qua* answering management.

4. Management No. 2 & 3 contested the case of the workman and filed written statement raising preliminary objection that at the time of taking over the contract for technical manpower, the workman was already working in GMCH, Chandigarh as the contractual employee with previous contractor. On merits, it is pleaded that the workman started absents from 27.01.2015 onwards and visited the answering management only on 04.10.2015 to get her final EPF withdrawal form signed from the Regional Director of the answering management which was signed and handed over to the workman for depositing in the office of Regional Provident Commission, Sector 17, Chandigarh. In her final withdrawal EPF form she had herself mentioned against para 6 of the form i.e. reason for leave service "Resigned". So her services were not terminated by the answering management. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

5. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

- (1) Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
- (2) Whether there is no relationship of employee & employer between the workman & management No.1 ? OPM
- (3) Relief.

6. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, management No.1 examined Smt. Renu Bala—Senior Assistant as MW1 and management No.2 examined Col. S. P. Puri (Retd.)—Regional Director as MW2. Learned Law Officer for management No.1 and learned representative for management No. 2 & 3 closed the evidence.

7. I have heard learned representative for the workman and learned Law officer for management No.1 and learned representative for management No.2 & 3 and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

Issue No. 1 & 2 :

8. Both these issues are taken up together to avoid repetition. In order to prove these issues learned representative for the workman has examined the workman as AW1, who deposed that in the year 1997 management No.1 advertised the permanent vacancy for the post of File Restorer. She applied for the post and selected and she joined in January 1998. Copy of identity card is Exhibit 'AW2'. After completion of one year she become the permanent employee and requested for equal pay for equal work. She met with Director Principal on 23.01.2015. She went to attend normal duty on 20.02.2015 but she was not allowed to mark her attendance and refused work. She further made a complaint to the police and a complaint sent to SSP, copy of which is Exhibit 'AW3'. She was regular employee of management No.1. There was no complaint whatsoever against her work & conduct and her work & conduct was appreciated by all. The management has violated the provisions of Section 25-F of the ID Act. She is entitled for reinstatement with continuity of service and full back wages.

9. Learned representative for the workman has argued that the workman was appointed in January 1998 and become permanent employee after completion of one year continuous & uninterrupted employment. Work & conduct of the workman was satisfactory. She was not allowed to join on 20.02.2015. Refusal of work amounts to termination is retrenchment under Section 2(oo) of the ID Act and the management had also violated the provisions of Section 25-F of the ID Act as the workman was not issued any charge sheet and no inquiry was conducted against the workman and she was not paid retrenchment compensation at the time of termination. Learned representative for the workman placed reliance on citations **Parbhagla Van Adhikari Social Forestry versus Dayanand & Another**, 2015(2) RSJ 748; **Mahboob Khan Versus The Presiding Officer, Labour Court, Ambala & Others**, 2014(1) RSJ 440; **Mishrilal & Others Versus State of M.P. & Others**, (2005)10 SCC 701; **OM Parkash Versus The Presiding Officer & Others**, 2015(3) RSJ 243 and **Umralla Gram Panchayat Versus The Secretary, Municipal Employee Union & Others**, 2015(3) RSJ 692 (SC) and prayed for reinstatement of the workman with continuity of service and full back wages.

10. On the other hand, learned Law Officer for management No.1 examined Smt. Renu Bala – Senior Assistant as MW1, who deposed that management No.1 is not a principal employer and never deployed the workman. No appointment letter was issued to the workman. She further deposed that no wages were paid to the workman by the management. Attendance register was also not maintained by the management. GMCH has neither appointed any labour nor concerned with various issues regarding services like employment/ termination of outsource workmen. The service provider to whom the contract was allotted by GMCH is a principal employer so there is no employer-employee relationship between the GMCH and workman. Wages of the workman are governed by the contract agreement. She further deposed that the workman was not allowed to mark her attendance as her replacement had already received in the Medical Record Department in compliance of order of the competent authority dated 16.02.2015.

11. Management No. 2 & 3 examined Col. S. P. Puri (Retd.)—Regional Director, who deposed that they are service provider to various departments and other organisation as per their requirement. The workman was already working in GMCH as contractual employee with previous contractor. The workman started absenting from duty from 27.01.2015 onwards and visited him only on 04.10.2015 to get her final EPF withdrawal form signed from him, which was signed and hand over to her for depositing in the office of Regional Provident Commissioner, Sector 17, Chandigarh. In her final withdrawal form she had herself mentioned against para 6

of the form reasons for leaving the service as resigned. She visited the premises of the management and got the PF form for final withdrawal signed on-04.10.2015 so her services were never terminated by them but on the contrary after having absent from duty from 27.01.2015 onwards she resigned from the job and submitted her final withdrawal form. Copy of the form Exhibit 'M2'. The workman herself resigned from her services so the management had not violated the provisions of the ID Act. They have never terminated the services of the workman.

12. Learned Law Officer for management No. 1 has argued that there is no employer-employee relationship between management No. 1 & workman. No appointment was issued, no wages were paid, no attendance was marked, no termination letter was issued by management No. 1. He prayed for dismissal of the present industrial dispute *qua* management No. 1.

13. Learned representative for management No. 2 & 3 has argued that there is no violation of the ID Act as the services of the workman were never terminated rather the workman started absenting from duties on 27.01.2015 onwards and visited management on 04.10.2015 and resigned from the services which is evident from the PF withdrawal forms. He prayed for dismissal of the present industrial dispute.

14. After giving my careful consideration to the rival contentions of both the sides, I find that it is admitted case that the workman was working with GMCH, Sector 32, Chandigarh. As per the averment of the workman she was employed by management No. 1 and she joined the services of management No.1 and become the permanent employee of management No. 1. Further she requested the management No.1 to promote her to the next higher post but nothing was done. Management No. 1 is clearly stating in its written statement as well evidence that posts are being outsourced through the service provider/contractor from time to time. The service provider is accordingly employer of the workman so the workman is not employee of management No. 1. Further as per averment of management No. 2 in the written statement as well as in the evidence led by management No. 2 that they have no concern with the workman as she was already working with the GMCH as contractual employee and as per record the workman started absented from duty and visited the management on 04.10.2015 to get his final EPF withdrawal form signed. In her withdrawal form she has mentioned in para 6 the reasons for leaving the service as resigned. She visited the office of management No. 2 and got the PF form for final withdrawal signed on 04.10.2015 and her services were never terminated by management No. 2. She herself signed from her services. From the perusal of oral and documentary evidence on record one thing is crystal clear that copy of form No. 19 of Employees' Provident Fund Scheme Exhibit 'MW2/1' is duly proved on file which was duly signed by the workman and in column No.6 therein it is clearly mentioned that reasons for leaving the services as "resigned". But the plea taken by the workman is that she had not resigned from the job rather column has been filed by the management itself. But the form bears the signatures of the workman so it is presumed that she had seen the contents of the form before signing the same. Moreover, as per averment of management No. 2 the workman had already taken his dues after approaching them in the month of October 2015 so when she had taken her EPF form management No. 2 the employer-employee relationship came had to end so she cannot claim reinstatement only on this score.

15. As regards the case of termination is concerned, management No.2 has already placed on record letter Mark 'A' dated 16.02.2015 and Exhibit 'MX2' dated 17.03.2015 in which GMCH had written letter to M/s Keshav for replacing Ms. Poonam Sharma—File Restorer (workman) and her substitute has been duly recommended by them on contract basis through outsource so meaning thereby there is no termination letter on the file as per their plea, they have already written to M/s Keshav Security for replacing of the workman. Further it is admitted by the workman herself that she had applied for 18 days leave effected from 27.01.2015 to 13.02.2015. But before her return management No.1 had already written to M/s Keshav Security for replacing the workman. Therefore she was not allowed to join her duties. It is not a case of termination rather resignation by the workman and the workman failed to prove on file that her signature were taken on Exhibit 'AW2/1' on blank paper rather she is admitting her signatures on it and also it is also admitted that she has taken EPF dues from management No.2 so relationship of employer-employee come to end with management No.2 and the workman has failed to prove on file employer-employee relationship with management No.1 as it is management No.2 through which the workman was outsource to work with management No. 1 i.e. GMCH.

The workman had also failed to produce on record any appointment letter etc. issued to her to prove that she was remained employee of management No.1. Authorities relied upon by the workman are not directly applicable to the facts of the present case. In case **Parbhagla Van Adhikari Social Forestry versus Dayanand & Another** (*supra*) it is held that on withholding of record adverse inference can be drawn. In case **Mahboob Khan Versus The Presiding Officer, Labour Court, Ambala & Others** (*supra*) it was held that the management did not plead that the petitioner was a back door entry to daily wage service so cannot argue that the appointment was against the constitutional scheme. The case **Mishrilal & Others Versus State of M.P. & Others** (*supra*) with regard to guidelines in the case of perjury. The citation **OM Parkash Versus The Presiding Officer & Others** (*supra*) and **Umralla Gram Panchayat Versus The Secretary, Municipal Employee Union & Others** (*supra*) are distinguishable on facts. In the light of discussion made above, the workman has failed to prove employer-employee relationship with management No.1 and that her services were terminated illegally by the management. Both these issues are decided against the workman and in favour of the management.

Relief :

16. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 25.02.2020.

(Sd.) ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 29th May, 2020

No. 13/1/9750-HII(2)-2020/6945.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 73/2016, dated 27.02.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

RAKESH KUMAR SHARMA S/O SHRI BHUPENDER KUMAR SHARMA, R/O HOUSE NO. 3103, FIRST FLOOR, SECTOR 37-D, CHANDIGARH-160036 (Workman).

AND

1. GUPTA AGENCIES, SCO NO. 80, SECTOR 24-C, CHANDIGARH.
2. HETERO HEALTHCARE LIMITED, 7-2-A2, HETERO COMPLEX, INDUSTRIAL ESTATE, SANATHANAGAR, HYDERABAD-500018.
3. AKBAR BASHA THAHIR, C/O NEST HEALTH CARE, 11/2, 2ND FLOOR, BAZZAR ROAD, SAIDAPET (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

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2. Case of the workman in brief is that M/s Hetero Healthcare Limited is a company incorporated under Companies Act, 1956 and involved in Pharmaceutical selling. The workman was working as Medical Representative with the management at Chandigarh HQ. The date of joining of the workman with the company was 17.02.2015. Due to his effective working the services of workman were confirmed with effect from 01.09.2015. The work profile of the workman was limited to promote the products of the company to the doctors with a aim to convince the Doctor to prescribe the product, check the availability of the product at the nearing chemist and if there is any order gave it to the concerned stockiest, collect the sales record and expiries from the stockiest and send it to the company for approval and other necessary action. The workman never worked in any supervisory capacity and no power of the management whatsoever was lie with the workman. The workman is an effective worker of his union and is always ready to peacefully put forward the demands of his colloques and co-comrades. The management is a habitual Labour Law breaker and is regularly remains indulge in unfair Labour Practice. The management often put pressure on its employee workmen to leave their lawful rights and thereby cause the workmen unlawful losses and to create unlawful gain for company. The management has a bitterness in its mind towards the unions and due to this bitterness in their mind set the management do not like the persons who actively participate in the union activities and the bitterness in the mind of the management is up to the extent that the management take revenge from the employees who actively participate in the union activities and the case of the workman in hand is of similar kind of episode wherein management have taken revenge from the workman for being humble and generous towards his Unions and co-employees. The case of the workman is very simple and clear, due to his union activities the management always remains annoyed with the workman and always tried to hamper his performance but due to his efficient and prompt working the workman always able to fulfill the challenges and achieve the company objectives. With the aforesaid ill-mindset the management under a *modus operandi* to force the workman to leave the unions specially targeted the workman Mr. Rakesh Sharma. The workman was asked to leave the unions otherwise he was threatened to face the music in view of *mala fide* transfers, stoppage of inputs and promotional material, synthetic decrease in sales and manipulated terminations. The main and sole motive of the management was to illegally force the workman to leave the unions. The wages of the workman was not released and through a letter dated 05.02.2016 the workman was malafidely transferred to a very far away place i.e. Chennai, which is more than 2000 KM away from Chandigarh and is totally different in language from present place. The transfer order was fictitious as no vacancy was lying at Chennai HQ. The reporting portal and the mail server were abruptly blocked by the company and it was verbally communicated to the workman that the Line Managers do not want the workman in the company due to his union activities. The sole motive was to shunt-out the workman as there are many HQ lying vacant in between Chennai and Chandigarh. Despite being a *mala fide* order the workman reported at Chennai but to his utter surprise no arrangement was there and it was told by the Reporting Manager Mr. Akbar Basha Thahir that no vacancy is lying there. The workman in consultation with the HR official started working in field in obedience of the company order but no input or help was provided to the workman and this lead to deterioration in physical health of the workman and being physically ill the workman was advised for bed rest and was forced to come back. Despite causing such grievances to the medical condition of workman no salary was released by the company with an intention to cause further deterioration in his health. The company just wants to punish the workman for his loyalty with his union. The workman was regularly updating Mr. Adbar Basha Thahir but a *mala fide* letter dated 15.04.2016 was issued to the workman in complete contradiction of the true facts. The workman promptly replied to the said letter with the copies of all his e-mails send to Mr. Adbar Basha Thahir and inform the true facts but the company on 11.05.2016 verbally informed the workman that the workman is no longer in the company and his services are terminated by the company. The management was asked many times to review its decision and to reinstate the working of the workman but all of no avail. Termination is illegal, null and void, unconstitutional and against the principles of natural justice as no charge sheet was served upon him, no enquiry was conducted against workman, no opportunity was given to the workman to defend his case and prove his innocence. *Mala fide* action of the management clearly breached the Vth schedule of the ID Act and the management is liable to be prosecuted under provisions of 25T & 25U. The services of the workman are retrenched without any retrenchment compensation. The company is still holding its operation in the territory. Since the workman

fall under the category of sales promotion employee so the workman is a 'workman' in terms of provisions of the Industrial Dispute Act, 1947. The workman had worked continuously at Chandigarh HQ. Even at the time of dispute the workman was working at Chandigarh HQ. Whole of the cause of action arose under the territorial jurisdiction of this court. This Court has a clear jurisdiction in the matter. Ultimately, it is prayed that the workman be reinstated at Chandigarh with all notional benefits and full back-wages.

2. Management No.1 contested the case of the workman and filed written statement raising preliminary objection that there is no relationship of employee-employer between the workman and the answering management. On merits, it is pleaded that claim statement does not relate to the answering management. The dispute is between workman and management No.2&3. The workman has unnecessarily impleaded the answering management as party to the reference for the reasons best known to him. There is no relationship of employee-employer between the workman and the answering respondent.

3. Management No.2 contested the case of the workman and filed written statement raising preliminary that apart from the other terms & conditions, there was a specific condition that the workman can be transferred to any place in India. The last working of the workman was at Chennai so this Court has got no jurisdiction to try & decide the present industrial dispute. No cause of action arose to the workman within local jurisdiction of this Court. On merits, it is pleaded that after confirmation of the services of the workman, first transfer order was issued by the company which he failed to comply with. He indulged in subordination after the completion of probation period and is trying to give colour of unfair labour practice to order of transfer. The workman by showing himself to be member of the union wants to convey to the management that he would work at the place of his choice and the management has no right to transfer him anywhere. The workman first joined the duties at Chennai with effect from 01.03.2016 and thereafter worked there till 05.03.2016 and then went on unauthorized leave with effect from 07.03.2016. Before joining at Chennai, the workman never made any representation that the action of the company is revengeful of the union activities of the workman. The workman after joining at Chennai did not make any representation to the management claiming that he found no arrangements and even has failed to mention what kind of arrangements were to be provided by the company. The workman proceeded on unauthorized leave with effect from 07.03.2016 and failed to resume his duties, which resulted into termination of his services. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman moved the application to ignore management No. 3 on the ground that management No. 3 had left the company. Accordingly, *vide* order dated 03.11.2016 the then Presiding Officer of this Tribunal/Court, declined the claim *qua* management No. 3 being given up.

5. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

- (1) Whether there is no relationship of employee & employer in between the workman and management No. 1 ? OPM-1
- (2) Whether this Court has no territorial jurisdiction to try & decide the present reference ? OPM-2
- (3) Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
- (4) Relief.

6. In support of the case, the workman stepped into the witness box as AW1 and closed the evidence. On the other hand, management No. 2 examined Shri Brahmadutta Behuria—Senior Regional Manager as MW1. Learned representative for management No.1 & 2 closed the evidence.

7. I have heard the learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1 :

8. Onus to prove issue No.1 was on the management No.1. Though management No.1 has not led any evidence but learned representative for management No.1 has argued that there exists no relationship of employer & employee. The workman was never in employment of management No.1. The dispute is between the workman and management No.2 & 3. The workman had been impleaded management No. 1 unnecessarily.

9. In this regard it is observed that the workman has nowhere mentioned that he had ever worked with management No.1 so no relief can be claimed from management No.1. Rather during the cross-examination conducted by management No.1 before this Court, the workman stated that his appointment letter was issued by M/s Hetro Healthcare Limited i.e. management No. 2 and he was paid salary by management No.2. Management No.1 is the stockiest of management No.2 and the working of management No.1 is separate and has no link with management No. 2. He is employee of management No.2 and not management No.1. From the cross-examination of the workman conducted by management No.1 it is crystal clear that there is no relationship of employee & employer in between the workman and management No.1. Accordingly, this issue is decided in favour of management No.1 and against the workman.

Issue No. 2 :

10. Onus to prove this issue was on management No. 2 and to discharge the same management No.2 examined Shri Brahmadutta Behuria – Senior Regional Manager as MW2 who deposed that the workman was appointed as Business Development Manager by the management *vide* appointment letter dated 17.02.2015 on probation. Apart from other terms & conditions, there was specific condition that the workman can be transferred to any place in India and the workman had accepted the terms & conditions. Initial appointment of the workman was for six months on probation and his services were confirmed as Business Development Manager on 01.09.2015. He further deposed that behaviour of the workman was suddenly changed and his over all performance was adjudged as very poor by the company. Thereafter he was transferred from Chandigarh to Chennai with effect from 10.02.2016 but after receiving the transfer order he sent email on 21.02.2016 information that due to health problem he will join at Chennai on 01.03.2016. After that the workman had joined his duties at Chennai on 01.03.2016 and *vide* his emails he reported his working at Chennai from 01.03.2016 to 04.03.2016 through email dated 05.03.2016. The workman went on leave on with effect from 07.03.2016 without any prior sanction or permission. On 08.03.2016 he sent an email informing that he was suffering from low back pain and the Doctor had suggested him rest for 15 days. Thereafter the workman had failed to join his duties and *vide* letter dated 15.04.2016 the management issued show cause notice to the workman calling him to show why he be not terminated for such insubordination, discrepancies and not following the norms & procedure of the company and staying on the medical leave without any sanction. The workman had left the services of the company by his own act & conduct. His services was not transferred to Chennai and terminated due to his involvement in union activities rather the transfer of the workman was purely based on administrative basis for the business of the company and as per the condition laid down in the appointment, which was never been challenged by the workman. So the workman has been rightly terminated.

11. Learned representative for management No.2 has argued that there exists no territorial jurisdiction to try the present industrial dispute as the workman has already been transferred to Chennai and he had joined at place of transfer and thereafter applied for leave.

12. On the other hand, the workman has examined himself as AW1 and deposed that he had joined M/s Hetro Healthcare Limited with effect from 17.02.2015. The company is involved in pharmaceutical selling and he was working as Medical Representative. His place of work was confined to Chandigarh.

13. The workman has argued that as per transfer order he joined at Chennai but despite reaching it was told by his reporting Manager that no vacancy is lying there. There was no intention of the management to grant work to the workman at Chennai headquarter. He contacted the HR officials and in consultation with them he started working in field in obedience of the order. He further argued that all his salary and wages are paid to him at Chandigarh and his headquarter was based at Chandigarh and his place of working was confined to Chandigarh. All the communication took place at Chandigarh so cause of action arose at Chandigarh. This Court has jurisdiction territorial jurisdiction to try & decide the present industrial dispute. He placed reliance on citation **Paritosh Kumar Versus State of Bihar**, 1984 LLC 1254 and **Bikash Bhushan Ghosh & Others Versus Novartis India Limited & Another**, 2007 5 SCC 591.

14. After considering the rival contentions of both the sides, I find that admittedly the workman joined as Hetero Healthcare Limited as Medical Representative at Chandigarh headquarter. It is also admitted by the workman and he was transferred from Chandigarh to Chennai. This admitted by the workman during cross-examination that it is correct that in his appointment letter it was prescribed that he can be transferred elsewhere in India and the business of management No.2 runs all over India having head office at Mumbai. Though during cross-examination he stated that that in compliance of transfer he went to Chennai but he was not offered joining in field work, but from the perusal of the document on record it reveals that Mark 'A' is transfer order of the workman to Chennai. Mark 'B' is email dated 21.02.2016 whereby the workman informed the management due to his health problem he will join on 01.03.2016 at Chennai. Mark 'C' is email dated 01.03.2016 whereby the workman gave his joining report at Chennai. Mark 'D' is email dated 05.03.2016 whereby the workman gave his field work report at Chennai for the period from 01.03.2016 to 05.03.2016. Mark 'E' is email dated 21.03.2016 whereby the workman applied for medical leave from 07.03.2016. Mark 'G' is email dated 06.02.2016 whereby the workman agreed to join at Chennai but requested for two weeks time to join at new place. Mark 'F' is email dated 08.02.2016 whereby the workman was advised to report at Chennai with effect from 01.03.2016. From the perusal of the documentary evidence it is crystal clear that the workman was transferred to Chennai and he agreed to join at Chennai on 01.03.2016. After joining he sent his field work report to the management. It is also admitted by the workman during his cross-examination that he had worked for about one week. As such last place of posting of the workman was at Chennai. Citation referred by the workman is not directly applicable to the present case. Rather reliance is placed on citations titled as **M/s Phoenix Industries Limited & Another Versus Sh. Ram Singh Bhandari**, W.P. (C) No.5014 of 2018 pronounced on 07.04.2015 by Hon'ble High Court of Delhi and **M/s Impact Merchandising Private Limited Versus Hoti Lal**, ID No.669 of 2006 pronounced on 24.03.2007 by Learned Presiding Officer, Labour Court No. XII, Karkardooma Courts, Delhi in which learned Labour Court has referred to case titled as **Management of Best & Crompton Engineering Limited, Automotive Products Division (represented by its Deputy General Manager), Chennai Versus Presiding Officer, Additional Labour Court, Chennai & T. V. Samy**, 2002 LLR 595, in which Hon'ble High Court has observed as under :

“what is relevant for sustaining a dispute before the Labour Court is the place where the cause of action arose substantially namely the place where the workman was working at the time when the order of termination was issued and not as to the place of initial appointment elsewhere even if he was transferred to other places.”

Further the learned Labour Court has referred to case titled as **M/s D.L.F. Universal Limited Versus The Government of National Capital Territory, Delhi & Others**, 2002 LLR 407 and **S.N. Sunderson and Co. Versus Presiding Officer, Labour Court No.1, Jabalpur**, 1973 LAB. I.C. 991 (V. 6 C212) wherein in Hon'ble Madhya Pradesh High Court has held as under :—

“There should clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose.”

15. In the present case in hand admittedly the workman remained absent from duties at Chennai for which he was issued show cause notice and his services were terminated as he failed to perform his duties. Therefore, cause of action arose which was situs of his employment at the time of his termination is not at Chandigarh so this Court lack territorial jurisdiction to adjudicate the present dispute. In view of the above discussion it is crystal clear that this Court has no territorial jurisdiction to adjudicate & try the present industrial dispute. This issue is decided in favour of management No.2 and against the workman.

Issue No. 3 :

16. As discussed while deciding issue No.2 it is crystal clear that no cause of action has arisen at Chandigarh so findings of issue No.3 has become redundant.

Relief :

17. In the light of findings on the issue No. 2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 27.02.2020.

(Sd.) ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 29th May, 2020

No. 13/1/9749-HII(2)-2020/6947.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 44/2017, dated 05.03.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

NEHA SHARMA R/O # 417, TOP FLOOR, SECTOR 8, PANCHKULA, HARYANA (Workman).

AND

SAFALTEK SOFTWARE PRIVATE LIMITED, PLOT NO. 2, TOWER C, 1ST FLOOR, DLF BUILDING, RAJIV GANDHI IT PARK, CHANDIGARH THROUGH ITS MANAGING DIRECTORS (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that she was appointed by the management as Technician (Technical Support Engineer) and she accordingly joined her duties with effect from May 2014 on consolidated monthly salary of ₹ 25,000/-. The management was satisfied with the working of the workman and had given increment and promotion to the workman from time to time and lastly she was working as Senior Technical Engineer. The workman is a married lady and was pregnant. On 29.03.2017 she informed the issue with HR team and on 04.04.2017 she sent the email to the management regarding appraisal and intimating that she is expecting a

baby and update her about the maternity benefits details. When the management came to know that she is pregnant the attitude towards her totally changed and they started behaving rudely and trying to pressurize the workman to leave the job. Further the management denied the maternity benefits to the workman and asked to avail three months unpaid leave and further forcing to take work from the home option. But the Doctors have advised the workman complete rest. The management forced the workman to write an email that she accepts these terms & conditions. The management just to harass and humiliate the workman issued an email dated 05.04.2017 regarding performance issue and threatened the workman if she did not give resignation they will not provide any experience certificate and in future the workman cannot do job in any other institute. Thereafter on 07.04.2017 she approached the Labour Commissioner, Chandigarh and during the pendency of the proceedings before the Labour Commissioner the management arbitrarily terminated the job of the workman. The reasons mentioned in the termination letter have actually no legal force as the workman during the course of her service performed her duties in a satisfactory manner without any complaint. Termination of the workman is tainted with *mala fide* intention as the management never wanted to give any maternity benefits to the workman. Termination of services of the workman is in violation of statutory provisions of the ID Act as the management had neither paid nor offered any retrenchment compensation to the workman. Ultimately, it is prayed that the workman be reinstated with all service benefits including continuity of service and full back wages.

3. The management contested the case and filed written statement raising preliminary objection that Ms. Neha Sharma (hereinafter called 'claimant') is not a 'workman' as defined under the ID Act. On merits, it is pleaded that the claimant was appointed as Technical Support Engineer at the office of the management at gross monthly emolument of ₹ 25,000/- per month. At the time of termination of employment agreement with the claimant her position was of Senior Technical Support Engineer and her CTC was ₹ 40,000/- per month. She was promoted to a senior level considering and she was expected to discharge her duties more diligently and efficiently to meet the standards / requirements of the management but the same never happened so her services were terminated as per terms of her employment with the management. Till the time of her termination the claimant never informed and / or applied for maternity benefits rather on 04.04.2017 the claimant sent two e-mails to the management, one for asking status of her appraisal and another for confirming about her maternity benefits. Prior to approaching Labour Authorities the claimant never mentioned even a single word about her pregnancy. She was only keen to know about her appraisal only. Since the claimant never applied for any maternity benefits so no question denying the same to her by the management never arise. Decision of the management in writing communicated via email dated 05.04.2017 was earlier communicated to the claimant orally on 03.04.2017 and at that point of time she never mentioned about her pregnancy. Employment of the claimant was terminated by the management in accordance with the terms of her employment agreement and all the amounts dues towards her were duly paid to her at the time of termination of her services. Other averments of the case of the claimant were denied and ultimately, it is prayed that the claim of the claimant be dismissed.

4. The workman filed replication reiterating the averments of her case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

- (1) Whether Ms. Neha Sharma is not a 'workman' under the ID Act ? OPM
- (2) Whether the services of M.s Neha Sharma were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
- (3) Relief.

5. In support of the case, the workman stepped into the witness box as AW1. The workman also examined Shri Baljinder Singh—Executive (MRD), Alchemist Hospital, Sector 21, Panchkula, Haryana as AW2. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Vinod Kumar—Deputy Manager (Operations) as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1 & 2 :

7. Both these issues are taken up together to avoid repetition of discussion. In support of her case the workman examined herself as AW1 and deposed that she was appointed by the management as Technical Support Engineer and joined her duties with effect from May 2014 on consolidated monthly salary of ₹ 25,000/-. Copy of offer letter and appointment letter is Exhibit 'A1' & 'A2'. Being satisfied with her work & conduct the management gave him increments and promotion from time to time. Copy of increment letters is Exhibit 'A3'. She further deposed that she was expected pregnancy so she informed the issue with HR team on 29.03.2017 and thereafter on 04.04.2017 she sent email to the management regarding appraisal and intimating that she is expecting a baby and update her about the maternity benefits details. Copy of email dated 04.04.2017 is Exhibit 'A4'. When the management came to know about the fact that she is pregnant they suddenly behaving rudely and trying to pressurize her to leave the job and denied the maternity benefits and asked to avail three months unpaid leave and further forced to take work from home option. The management forced her to write a an email that she accept these terms & conditions. She further deposed that instead of giving any reply to her email the management issued email dated 05.04.2017 regarding performance issue. Copy of email is Exhibit 'A5'. On 07.04.2017 she approached the Labour Commissioner, Chandigarh and during pendency of proceedings before the Labour Commissioner, the management arbitrarily terminated her job. Copy of termination letter is Exhibit 'A7'. The workman also examined Shri Baljinder Singh – Executive (MRD), Alchemist Hospital as AW2 who deposed that as per discharge summary, the date of admission of the workman in Gynaecology Department of the hospital is 17.07.2017 and she gave birth to baby boy and was discharged on 18.07.2017.

8. Learned representative for the workman has argued that the workman was appointed as Technical Support Engineer and joined the duties in May 2014 on the monthly salary of ₹ 25,000/- and she was doing his job sincerely and properly and the management was satisfied with her work. The workman is a lady and was pregnant. On 29.03.2017 she informed issue with HR and thereafter sent email to the management and when the management came to know that she was pregnant they changed their attitude and asked her to avail three months unpaid leaves. Instead of giving reply to the email of the workman the management had issued an email dated 05.04.2017 and on 07.04.2017 the workman approached the Labour Commissioner as she was being harassed and being humiliated to leave the job and further threatened if she did not gave resignation then they may not provide any experience certificate in future. He argued that she has been wrongly terminated which is violative of statutory provisions of the ID Act. He prayed for reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, the management examined Shri Vinod Kumar as MW1, who deposed that as per policies of the management an appraisal of the claimant was due in April 2017 and to decide her appraisal a meeting was conducted in which past one year performance was taken into consideration wherein the claimant was found non-performing in an efficient and professional manner. The claimant was required to share a recap of meeting with the management and HR department but the same was not shared by the claimant and on 04.04.2017 she sent email asking the status of her appraisal. Copy of the email is Exhibit 'RW1'. Subsequently, she sent another email wherein for the first time she informed the management and HR department about her pregnancy. Copy of the email is Exhibit 'RW2'. Since after know an outcome of the meeting dated 03.4.2017 two emails were deliberately sent by the claimant to misuse the benevolent provisions of law so email dated 05.04.2017 was sent to her reiterating in writing the decision of the management which was already conveyed to her orally on 03.04.2017. Entire exercise has been undertaken by the claimant just to force the management to grant an appraisal to her. The claimant had approached the management and sent a job application at its office in Chandigarh. The management invited her for an interview for the post of Technical Support Engineer and on the basis of various terms & conditions discussed and mutually agreed between her

and management, the management was pleased to extend an offer of employment to applicant. On acceptance of offer letter and on her joining, the claimant was given appointment letter dated 01.05.2014. After considering her performance, she was promoted as Senior Technical Support Engineer and her gross monthly emolument was also increased from ₹ 25,000/- to ₹ 40,000/- but the applicant delaying the work assigned to her and start avoiding and not complying with the instructions of her Team Manager. Various communications sent to the claimant by her Team Manager, pointing out her performance and delay in discharge of her responsibilities etc. from the past on year is Exhibit 'RW5' to 'RW12'.

10. Learned representative for the management has argued that the present industrial dispute has been made just to harass the management as the claimant was inefficient in discharging her duties and no recap of the meeting dated 03.04.2017 was ever submitted by the claimant rather she sent the email dated asking her status of appraisal. *Vide* email dated 05.04.2017 she was warned to do her duties properly so she has been terminated on 20.04.2017 rightly as she herself is default of employment agreement and she was terminated as per company policy and terms & conditions. He further argued that the present industrial dispute is not maintainable as the claimant is not a 'workman' as defined under the ID Act. He prayed for dismissal of the present industrial dispute.

11. After carefully considerations to the rival contentions of both the sides, I find that admittedly the workman was appointed by the management as Technical Support Engineer on consolidated salary of ₹ 25,000/- per month. Copy of offer letter is Exhibit 'A1', appointment letter is Exhibit 'A2', appraisal letters are Exhibit 'A3'. Learned representative for the management has vehemently argued that the present industrial dispute is not maintainable as Ms. Neha Sharma applicant is not a 'workman' as defined under Section 2(s) of the ID Act but argument advanced by learned representative for the management does not inspire the confidence of this Court as nothing has been brought on record by the management to prove that the workman was exercising any administrative, supervisory or managerial powers by issuing appointment letter, warning letter, sanctioning leave or having any power to take disciplinary action against the employees working under him. In this regard reliance is placed on citation **Anand Regional Coop. Oil Seedsgrowers' Union Limited Versus Shaileshkumar Harshadbhai Shah**, 2006 SCC (L&S) 1486 wherein the Hon'ble Supreme Court of India has held that primary duties performed by an employee are more important to ascertain whether he is a 'workman' or not and the designation of the employee or the name assigned to his class should not be given undue important and mere existence of subordinates whose work is required to be supervised is a *sine qua non* to prove supervisory work and the employee must have authority to initiate departmental proceedings against the sub-ordinates. So the management has failed prove that Ms. Neha Sharma is not a 'workman' as defined under Section 2(s) of the ID Act.

12. Admittedly the applicant sent email dated 04.04.2017 Exhibit 'A4' in which she had mentioned that she was expecting a baby and she was enquiring about the benefit of maternity leave details. Copy of email dated 05.04.2017 is Exhibit 'A5' which was sent by the management. Relevant extract of the same is as under :—

“Considering all the facts, we have come up on the decision of issuing 15 days written warning cum notice to you till 20th April 17 during this time period your performance will be closely reviewed on a day to day basis. You need to send daily work report to your RM and HR as well.

If we do not observe any significant improvement to your performance, your employment agreement will stand cease on 20th April 2017.”

and *vide* letter dated 03.05.2017 the workman was intimated that the management had not seen any improvement in her performance and the management taking a very serious note of this feedback had decided to terminate her services and her last working day is 05.05.2017.

13. Only ground taken by the workman is that she was pregnant and when she told about her pregnancy to the management the management started harassing and humiliating her and forced her to leave the job and threatened herself to give resign whereas the management is stating that the workman never produced any certificate of pregnancy with the management and she had never applied leave with the management rather as per email Exhibit 'A5' 05.04.2017 she was given warning with regard to his performance and misbehaviour conduct. Instead of filing reply to the application she had approached reached before the Labour Commissioner. The management had also placed reliance on terms & conditions of employment which was very much in the knowledge of the workman. Moreover, at the time of termination the workman was duly paid at the time of termination. From the cross-examination of the workman it is crystal clear that she is admitting that email dated 05.04.2017 was with regard to warning. At the time of termination she was given two cheques equivalent to her monthly salary. Her affidavit was prepared by her representative on her directions. She was not aware about Section 25-F and 35 of the ID Act. It is correct that she had not placed on record any document relating to her pregnancy before this Court. As regarding the appraisal by the management is concerned she also admitted that her appraisal was due in the month of April 2017 and at the time of appraisal due the management conducts meeting with the concerned employee and meeting was held between herself and management and the said meeting was on 3/4th April 2017 and she had to sent recap of meeting on email. She has failed to prove the reply to the email sent by the company. She herself admitted in her cross-examination that she had taken two cheques equivalent to her salary at the time of termination. The management had adopted the procedure by issuing notice, warning and had given two cheques equivalent to her salary before terminating the services of the workman. In the light of discussion made above, the management has failed to prove that Ms. Neha Sharma is not a 'workman' as defined under the ID Act. On the other hand, the workman has failed to prove that her services were terminated illegally by the management. Accordingly, issue No.1 is decided against the management whereas issue No.2 is decided against the workman and in favour of the management.

Relief :

14. In the light of findings on the issue No. 2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 05.02.2020.

(Sd.) ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Payal Sharma, w/o Neeraj Prashar, r/o 3018, Sector 47-D, Chandigarh, have changed my name to Reetu Prashar.

[192—1]

I, Asha Rani, w/o Dharam Veer, # 20, Mauli Jagran, Chandigarh changed my name to Satya.

[193—1]

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